

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JOSEPH L. MATTHEWS  
and  
EMMA H. MATTHEWS

Claim No. CU -1520

Decision No. CU 4308

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOSEPH L. MATTHEWS and his wife, EMMA H. MATTHEWS, for \$14,233.00 based upon the asserted ownership and loss of a bank account, household furnishings, cash, firearms, two automobiles, 6,000 feet of movie film, and a retirement pension from the Sugar Retirement Fund. Claimants, JOSEPH L. MATTHEWS and EMMA H. MATTHEWS, have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949, as amended [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The evidence establishes and the Commission finds that claimants acquired title to various items of property in Cuba, discussed in detail below. The Commission also finds that pursuant to the community property law of Cuba, claimants each acquired a one-half interest in the property claimed herein with the exception of any pension right due from the Sugar Retirement Fund.

The taking of the various properties by the Government of Cuba is discussed in each item below.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter, the Cuban peso being on a par with the United States dollar.

#### Bank Account

On the basis of the bank statement submitted, the Commission finds that claimants each owned a one-half interest in an account with the Camaguey branch office of The Royal Bank of Canada, having a balance of 2,147.09 pesos on August 31, 1960 (a date subsequent to claimants' departure from Cuba on August 7, 1960).

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected a confiscation of all goods and chattels, rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba prior to that date, and that the bank account was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

#### Other Personal Property

Another portion of the claim is based upon household furnishings, cash, firearms, two automobiles, and 6,000 feet of movie film. Based upon the entire record, the Commission finds that claimants owned in equal shares the contents of their former home in Cuba which included china, crystals, electric appliances, clothes, and luggage having a total value of \$3,460.00. Claimants also owned in equal shares cash of 300.00 pesos, guns and ammunition of a total value of \$450.00, a 1958 Dodge automobile and a 1953 Jeep station wagon having an aggregate value of \$1,275.00, and 6,000 feet of movie film having a value of \$580.00, which items were taken by the Government of Cuba on August 7, 1960, in connection with claimants' departure from that country.

#### Pension

It is asserted by JOSEPH L. MATTHEWS that he was entitled to a pension from the Sugar Retirement Fund in Havana, Cuba for having contributed to such Fund for about 27 years. It is further stated by JOSEPH L. MATTHEWS that no amounts on account of such pension rights were received by him.

On the basis of evidence submitted by JOSEPH L. MATTHEWS, the Commission finds that claimant was entitled to a pension in the amount of 131.00 pesos per month or 1,572.00 pesos per annum from the Sugar Retirement Fund in Havana, Cuba.

The Sugar Retirement Fund was established by Law No. 20 of March 27, 1941, and amended by Law No. 4 of November, 1948, Law-Decrees No. 586 of December 17, 1952, No. 711 of February 27, 1953, and No. 1239 of January 1, 1954, Decree No. 3394 of September 5, 1949, and Law-Decree No. 1959 of January 25, 1955.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba, the benefits remained unpaid. On the basis of evidence of record, the Commission finds that from September 1, 1960 and thereafter, the transfer of pension benefits to claimant then residing in the United States was prohibited by the Government of Cuba.

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property within the purview of Section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon retirement pension benefits arose on September 1, 1960.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the United States

Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 59 amounts to 11.6960 times the yearly sum of the annuity. Since on September 1, 1960, JOSEPH L. MATTHEWS was 59 years of age, the value of his discounted annuity on that date amounted to \$1,572.00 (the peso being on a par with the United States dollar) times 11.6960, or \$18,386.11.

In view of the foregoing, the Commission concludes that claimants sustained losses within the purview of Title V of the Act in amounts as follows:

<u>Property</u>	<u>JOSEPH L. MATTHEWS</u>	<u>EMMA H. MATTHEWS</u>
One-half of bank account	\$ 1,073.55	\$ 1,073.54
One-half of other personal property	3,032.50	3,032.50
Retirement pension	<u>18,386.11</u>	<u>6-</u>
	\$22,492.16	\$ 4,106.04

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by the claimants as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
JOSEPH L. MATTHEWS	August 7, 1960	\$ 3,032.50
	September 1, 1960	18,386.11
	December 6, 1961	1,073.55
EMMA H. MATTHEWS	August 7, 1960	\$ 3,032.50
	December 6, 1961	1,073.54

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CERTIFICATION OF LOSSES

The Commission certifies that JOSEPH L. MATTHEWS sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-two Thousand Four Hundred Ninety-two Dollars and Sixteen Cents (\$22,492.16) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that EMMA H. MATTHEWS sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Thousand One Hundred Six Dollars and Four Cents (\$4,106.04) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

7 JAN 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)

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